

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

SWEET STREET DESSERTS, INC.	CIVIL ACTION
v.	NO. 12-3363
CHUDLEIGH'S LTD.	

Baylson, J.

January 15, 2015

MEMORANDUM AND ORDER

This case involves the issue of whether an apple turnover manufactured by Plaintiff Sweet Street Desserts, Inc. (“Sweet Street”) and sold at Applebee’s restaurants infringed the product configuration trademark of Defendant Chudleigh’s Ltd. (“Chudleigh’s”) in the design of an apple pastry dessert (the “Blossom Design”).

On December 23, 2014, the Court issued a Memorandum (ECF No. 106) and Order (ECF No. 107) concluding that Chudleigh’s Blossom Design was functional and granting Sweet Street’s Motion for Summary Judgment of Non-Infringement, Count I of Sweet Street’s Complaint.¹ The Court reserved judgment on Counts II (declaratory judgment of invalidity of Chudleigh’s U.S. Trademark Registration No. 2,262,208) and III (cancellation of Chudleigh’s trademark registration as generic) of Sweet Street’s Complaint and requested supplemental briefing on the question of the Court’s power to declare U.S. Trademark Registration No. 2,262,208 invalid and/or to cancel that trademark registration as functional.

On January 12, 2015, Sweet Street (ECF No. 109) and Chudleigh’s (ECF No. 108) filed supplemental briefs, which the Court has reviewed. The parties do not dispute that 15 U.S.C.

¹ The Court also granted Chudleigh’s Motion for Summary Judgment on Counts V (tortious interference as to Applebee’s) and VI (tortious interference as to Form & Frys) of Sweet Street’s Complaint.

§§ 1064(3) and 1119 empower the Court to declare U.S. Trademark Registration No. 2,262,208 invalid and cancelled as functional.

Accordingly, it is hereby ORDERED that:

1. Sweet Street's Motion for Summary Judgment on the Invalidity of U.S. Trademark Registration No. 2,262,208, Count II of Sweet Street's Complaint, is GRANTED, and the Court declares U.S. Trademark Registration No. 2,262,208 to be invalid on the grounds that the product configuration depicted in that trademark registration is functional.
2. Sweet Street's Motion for Summary Judgment on the Cancellation of U.S. Trademark Registration No. 2,262,208, Count III of Sweet Street's Complaint, is GRANTED, on the grounds that the product configuration depicted in that trademark registration is functional.
3. The parties shall have 14 days from the date of this Order to file any motion seeking to stay the implementation of this Court's Order. The Court will take no action to implement the cancellation of U.S. Trademark Registration No. 2,262,208 during that 14-day period.
4. If no party files a motion to stay the Court's Order within 14 days or such a motion to stay is not granted, the Court will issue a further order directing the United States Patent and Trademark Office to implement the cancellation of U.S. Trademark Registration No. 2,262,208.

BY THE COURT:

/s/ Michael M. Baylson

Michael M. Baylson, U.S.D.J.